Appendix.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16557

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF
AND ALL OTHERS SIMILARLY SITUATED

v.

MORTON SALT COMPANY; PIONEER SALT COMPANY; SALT SERVICE INCORPORATED; INTERNATIONAL SALT COMPANY; CAYUGA ROCK SALT COMPANY AND DIAMOND CRYSTAL SALT COMPANY AND CARGILL INCORPORATED
STATE OF NEW YORK,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued October 19, 1967

Before HASTIE, FREEDMAN and SEITZ, *Circuit Judges.*

OPINION OF THE COURT.

(Filed November 6, 1967)

PER CURIAM.

Appellant, State of New York ("New York"), appeals from a denial of its motion for leave to intervene as a

tainly this ground alone would not justify a finding that the district court abused its descretion in denying the untimely intervention. The procedures and provisions fairly established by our courts are binding on public as well as private litigants.

If we consider New York's motion more broadly, it appears in no better position. New York's principal law officer, its attorney general, was chargeable with knowledge of the action. In fact an investigation was instituted by the attorney general of New York in 1960. In addition, the attorney general's name appeared on a timely intervention in this action by the New York Thruway Authority. Once it is concluded, as we have found here, that the closing date was reasonable, the burden was on New York to offer some reasonable excuse for its delay. This it did not do and so we need not delve into the possible prejudice to any of the defendants which might arise from the granting of the motion. In the total setting we cannot find that it was an abuse of discretion for the district court to deny the motion.

New York argues that the district court's order of February 14, 1966, amending the discovery schedule also, by implication, voided the date fixed for closing the class. We cannot so read it.

New York also argues that it was entitled to intervene as a matter of right under F. R. C. P. § 24(a)(2). This argument was not advanced below. But assuming that the matter is properly before us and further assuming that New York's claim is within the cited portion of the rule, the provision requires "timely application". As indicated, we think the district court in effect properly and necessarily held that the application was not timely.

We find no error in the judgment below and it will be affirmed.

EXCERPTS FROM RECORD.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF
AND ALL OTHERS SIMILARLY SITUATED.

v.

MORTON SALT COMPANY
PIONEER SALT COMPANY
SALT SERVICE INCORPORATED
INTERNATIONAL SALT COMPANY
CAYUGA ROCK SALT COMPANY
DIAMOND CRYSTAL SALT COMPANY

COMPLAINT.

1. This complaint is filed and these proceedings are instituted on behalf of the City of Philadelphia and all other state and municipal governments, governmental agencies and governmental subdivisions similarly situated under Section 4 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 731 (15 U. S. C. § 15), to recover treble damages and the cost of suit, including a reasonable attorneys' fee, against the defendants for the injuries sustained by plaintiff and other members of the class represented by it who may be permitted to intervene, by reason of defendants' violations of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, 210, (15 U. S. C. § 1, 2),

commonly known as the Sherman Act, as hereinafter alleged.

2. The City of Philadelphia, Pennsylvania, is a municipal corporation of the State of Pennsylvania.

3. Plaintiff is representative of a class, as defined by F. R. C. P. #23(a)(3), which is so numerous as to make it impracticable to bring them all before the Court, the class consisting of all state and municipal governments, governmental agencies and governmental subdivisions using rock salt for deicing and water softening purposes and generally purchasing rock salt by sealed bids, and which have been injured by the unlawful conspiracy hereinafter alleged. Plaintiff will fairly insure the adequate representation of the entire class, and brings this action on behalf of the entire class.

4. Each of the defendants transacts business and is found within the Eastern District of Pennsylvania.

5. Each of the corporations listed below is made a defendant herein. Each of said corporations is organized and exists under the laws of the state indicated and has its principal place of business in the city indicated. Within the period of time covered by this complaint, said defendants have engaged in the business of producing, distributing and/or selling rock salt throughout the United States:

Name of Corporation	*State of Incorporation*	*Principal Place of Business*
Morton Sale Company	Illinois	Chicago, Illinois
Pioneer Salt Company	Delaware	Philadelphia, Pennsylvania
Salt Service Incorporated	Pennsylvania	Philadelphia, Pennsylvania

Name of Corporation	*State of Incorporation*	*Principal Place of Business*
International Salt Company	New Jersey	Clarks Summit, Pennsylvania
Cayuga Rock Salt Company	New York	Myers, New York
Diamond Crystal Salt Company	Michigan	St. Clair, Michigan

6. The acts alleged in this complaint to have been done by each of the defendants were authorized, ordered or done by the officers, agents, employees or representatives of each defendant while actively engaged in the management, direction or control of its affairs, and acting on its behalf within the scope of their employment.

7. As used herein, "Rock Salt" means salt in a solid form existing in nature as a layer, bed or formation which is mined and pulverized into fine and coarse grades for many uses including deicing control and water softening.

8. A "Rock Salt producer" means a person, firm or corporation engaged in the business of mining and distributing rock salt.

9. A "Rock Salt distributor" means a person, firm or corporation engaged in the business of distributing rock salt which it has purchased from a rock salt producer.

10. As used herein, "Destination point" means the geographical location of the private, state or municipal purchaser of rock salt.

11. As used herein, "F. O. B. mine price" means the price of the rock salt at the mine.

12. As used herein, "Delivered price" means the price quoted to the purchaser consisting of the F. O. B. mine price of the rock salt plus transportation charges.

13. As used herein, "Deicing control" means the application of rock salt to the surface of roads and highways for purposes of removing snow and ice.

14. Defendants are principal rock salt producers, mining and distributing rock salt sold in the United States. The total sales of rock salt amounted to approximately $25,000,000 for the year 1960.

15. Rock salt is mined in five major areas in the country. These areas are located in the States of Louisiana, Kansas, Michigan, Ohio and New York. Defendants also operate mines, or purchase rock salt from mines, located in southern Canada. Rock salt is sold and shipped in interstate commerce by the defendants and others from these areas to other areas of the United States, including the City of Philadelphia and the State of Pennsylvania.

16. State and municipal agencies generally purchase rock salt, used primarily for deicing control, on a bid basis. A contract is awarded to the low bidder. Bidders are required by states and municipalities to quote delivered prices.

17. Rock salt is also sold and shipped in interstate commerce to most of the Cities and States in the United States, including the City of Philadelphia and the State of Pennsylvania, to private purchasers for use, among other, in meat packing and water softening processes and for agricultural processes such as salting livestock.

18. The F. O. B. mine prices are published figures and are known throughout the trade. The producers in each area have the same F. O. B. mine prices as their competitors in that area. There are three F. O. B. mine prices for the five producing areas. There are the Kansas price, the Louisiana price, and the Northern price which applies

to mines located in the States of Michigan, Ohio, New York and southern Canada. Truck and rail freight rates between the mines and all destination points are published by the Interstate Commerce Commission.

19. For many years last past, the exact date being to the Plaintiff unknown, but at least as early as 1957 and continuing to the present, the defendants and others to the Plaintiff unknown, have engaged in an unlawful combination and conspiracy to establish, maintain, stabilize and fix the prices of rock salt, in unreasonable restraint of the hereinbefore described trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", c. 647, 26 Stat. 209, as amended (15 U. S. C., Sec. 1) commonly known as the Sherman Act.

20. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, and others to the Plaintiff unknown, the substantial terms of which have been and are that they agree:

(a) to fix the prices of rock salt to be sold to private and municipal purchasers;

(b) to quote list prices on rock salt bids to municipal and state authorities;

(c) to adhere to an industry established multiple basing point or zone pricing formula which fixes the delivered prices to each destination point in the United States;

(d) to communicate with each other for the purpose of exchanging information concerning F. O. B. mine prices, transportation charges and other infor-

mation incidental to fixing delivered prices to be submitted as bids to state and municipal purchasers; and

(e) to notify competing producers in advance of any contemplated change in the F. O. B. mine prices of rock salt.

21. The aforesaid combination and conspiracy has had the effects among others, of:

(a) resulting in identical bids for the award of contracts covering the rock salt requirements of state and municipal Governments throughout most of the states in the United States; and

(b) forcing state, municipal and private purchasers to pay high, arbitrary and non-competitive prices for rock salt produced and sold by the defendants and the co-conspirators.

22. On July 11, 1961, the United States of America instituted Civil Action No. 4-61-Civil 162 in the United States District Court for the District of Minnesota, Fourth Division, against the defendants Morton Salt Company, International Salt Company and Diamond Crystal Salt Company. By said complaint, the United States charged that for the past several years and continuing until sometime in 1961, defendants engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce in rock salt in violation of Section 1 of the Sherman Act, and further charged that said combination and conspiracy consisted of a continuing agreement to fix prices and submit collusive bids to governmental agencies and corporations in connection with the sale of Rock Salt. The United States further charged therein that defendants, for the purpose of forming and effectuating said combination and conspiracy had done, among other things, those acts alleged herein in paragraph 20.

23. During the period from July 1957 to June 1962 Plaintiff purchased rock salt from Defendants, Morton Salt Company, Pioneer Salt Company and Salt Service Incorporated in a total amount of $655,701.51.

24. By reason of Defendants' conspiracy hereinabove alleged, Plaintiff's aforesaid purchases were made at prices higher than the prices which plaintiff would have had to pay under natural conditions of competition in the absence of any such conspiracy, and Plaintiff has thereby been injured and damaged. Plaintiff is unable to state its damages with precision at the present time, since its determination will require discovery of and an analysis of and accounting from Defendants' books and records.

WHEREFORE, Plaintiff requests that judgment be entered in its favor in threefold the amount of the damages determined to have been sustained by Plaintiff, together with the cost of suit, including a reasonable attorneys' fee.

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Counsel.

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IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA, A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY,
CARGILL, INCORPORATED.

ORDER GRANTING MOTION TO AMEND THE COMPLAINT AND GRANTING MOTIONS TO INTERVENE.

AND NOW, TO WIT, this 12th day of May, 1965, it is ORDERED AND DECREED that the motion filed on February 10, 1965 to amend the complaint of the City of Philadelphia on behalf of itself and all other state and municipal govern-

ments, governmental agencies and governmental subdivisions similarly situated is granted.

IT IS FURTHER ORDERED AND DECREED that the motions to intervene as party plaintiffs in this action are granted as to the following:

CONNECTICUT:

Stamford

MAINE:

Augusta
Bangor
Bath
Brewer
Brunswick
Bucksport
Cape Elizabeth
Caribou
Farmington
Freeport
Gardiner
Houlton
Kennebunk
Lewiston
Limestone
Lisbon
Millinocket
Portland
Presque Isle
Rockland
Scarborough
Skowhegan
South Portland
Town of Falmouth
Waterville
Westbrook
Wilton
Windham
Yarmouth

MARYLAND:

Baltimore

MASSACHUSETTS:

Boston

MICHIGAN:

Bay City
Boards of County Road Commissionsrs of Macomb, Muskegon, Oakland, Washtenau and Wayne
Dearborn
Detroit
Grand Haven
Grand Rapids
Holland
Lansing
Livonia
Saginaw
Wyoming

NEW JERSEY:

Irvington

NEW YORK:

New York City
New York City Transit Authority
Port of New York Authority
Town of Oyster Bay, L. I.

PENNSYLVANIA:

Allegheny County
Borough of Monroeville
Commonwealth of Pennsylvania
Easton
Hazleton
Pittsburgh
Whitehall Borough

Each above mentioned intervenor may serve its complaint on the defendants in this action by service on their counsel of record therein.

This order is without prejudice to the rights, if any, asserted by Cayuga Rock Salt Company in its objections to the motions to intervene, upon which objections the court expresses no opinion at this time, and also it expresses no opinion in reference to Cayuga Rock Salt Company's motion to dismiss the independent suits filed under different numbers in this court.

/s/ Allan K. Grim, *J.*

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

AND

COMMONWEATH OF PENNSYLVANIA,
NEW YORK CITY,
NEW YORK PORT AUTHORITY,
CITY OF DETROIT, MICHIGAN,
BOARD OF COUNTY ROAD COMMISSIONERS OF THE COUNTY OF WAYNE, MICHIGAN, AND ALL OTHER PARTS LISTED IN EXHIBIT A TO AMENDED COMPLAINT,

Intervenor Plaintiffs

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY,
CARGILL, INCORPORATED.

AMENDED COMPLAINT.

Jury Trial Demanded.

1. This Amended Complaint is filed and these proceedings are instituted on behalf of the plaintiff City of Philadelphia and all other state and municipal governments, governmental agencies and governmental subdivisions similarly situated and intervenor plaintiffs Commonwealth of Pennsylvania, New York City, New York Port Authority, City of Detroit, Michigan, Board of County Road Commissioners of the County of Wayne, Michigan, and all other parties listed in Exhibit A to Amended Complaint, under Section 4 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 731 (15 U. S. C. § 15), to recover treble damages and the cost of suit, including reasonable attorneys' fees, against the defendants for the injuries sustained by plaintiff, intervenor plaintiffs and other members of the class who may be permitted to intervene, by reason of defendants' violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647 Stat. 209, 210, (15 U. S. C. § 1, 2), commonly known as the Sherman Act, as hereinafter alleged.

2. The City of Philadelphia, Pennsylvania, is a municipal corporation of the State of Pennsylvania.

3. Plaintiff is representative of a class, as defined by F. R. C. P. 23(a)(3), which is so numerous as to make it impracticable to bring them all before the Court, the class consisting of all state and municipal governments, governmental agencies and governmental subdivisions using rock salt for deicing and water softening purposes and generally purchasing rock salt by sealed bids, and which have been injured by the unlawful conspiracy hereinafter alleged.

Plaintiff will fairly insure the adequate representation of the entire class, and brings this action on behalf of the entire class.

4. Intervenor plaintiffs are public bodies corporate, and/or municipal corporations, and/or states of the United States as indicated in Exhibit A attached to this Amended Complaint, incorporated by reference herein and made part hereof. Each intervenor plaintiff is a member of the class represented by the plaintiff in above action, as set forth more fully herein in Paragraph 3 above.

5. Each of the defendants transacts business and is found within the Eastern District of Pennsylvania.

6. Each of the corporations listed below is made a defendant herein. Each of said corporations is organized and exists under the laws of the state indicated and has its principal place of business in the city indicated. Within the period of time covered by this Amended Complaint, said defendants have engaged in the business of producing, distributing and/or selling rock salt throughout the United States:

Name of Corporation	*State of Incorporation*	*Principal Place of Business*
Morton Salt Company	Illinois	Chicago, Illinois
Pioneer Salt Company	Delaware	Philadelphia, Pennsylvania
Salt Service Incorporated	Pennsylvania	Philadelphia, Pennsylvania
International Salt Company	New Jersey	Clarks Summit, Pennsylvania

Name of Corporation	*State of Incorporation*	*Principal Place of Business*
Cayuga Rock Salt Company	New York	Myers, New York
Diamond Crystal Salt Company	Michigan	St. Clair, Michigan
Cargill, Incorporated	Delaware	Minneapolis, Minnesota

7. The acts alleged in this Amended Complaint to have been done by each of the defendants were authorized, ordered or done by the officers, agents, employees or representatives of each defendant while actively engaged in the management, direction or control of its affairs, and acting on its behalf within the scope of their employment.

8. As used herein, "Rock Salt" means salt in a solid form existing in nature as a layer, bed or formation which is mined and pulverized into fine and coarse grades for many uses including deicing control and water softening.

9. A "Rock Salt producer" means a person, firm or corporation engaged in the business of mining and distributing rock salt.

10. A "Rock Salt distributor" means a person, firm or corporation engaged in the business of distributing rock salt which it has purchased from a rock salt producer.

11. As used herein, "Destination point" means the geographical location of the private, state or municipal purchaser of rock salt.

12. As used herein, "F. O. B. mine price" means the price of the rock salt at the mine.

13. As used herein, "Delivered price" means the price quoted to the purchaser consisting of the F. O. B. mine price of the rock salt plus transportation charges.

14. As used herein, "Deicing control" means the application of rock salt to the surface of roads and highways for purposes of removing snow and ice.

15. Defendants are principal rock salt producers, mining and distributing rock salt sold in the United States. The total sales of rock salt amounted to approximately $25,000,000 for the year 1960.

16. Rock salt is mined in five major areas in the country. These areas are located in the States of Louisiana, Kansas, Michigan, Ohio and New York. Defendants also operate mines, or purchase rock salt from mines, located in southern Canada. Rock salt is sold and shipped in interstate commerce by the defendants and others from these areas to other areas of the United States, including but not limited to the Ctiy of Philadelphia, Commonwealth of Pennsylvania, and various cities and public bodies corporate situated throughout the United States.

17. State and municipal agencies generally purchase rock salt, used primarily for deicing control, on a bid basis. A contract is awarded to the low bidder. Bidders are required by states and municipalities to quote delivered prices.

18. Rock salt is also sold and shipped in interstate commerce to most of the cities and states in the United States, including the Ctiy of Philadelphia and the State of Pennsylvania, to private purchasers for use, among other, in meat packing and water softening processes and for agricultural processes such as salting livestock.

19. The F. O. B. mine prices are published figures and are known throughout the trade. The producers in each area have the same F. O. B. mine prices as their competitors in that area. There are three F. O. B. mine prices

for the five producing areas. There are the Kansas price, the Louisiana price, and the Northern price which applies to mines located in the States of Michigan, Ohio, New York and southern Canada. Truck and rail freight rates between the mines and all destination points are published by the Interstate Commerce Commission.

20. For many years last past, the exact date being to the plaintiff and intervenor plaintiffs unknown, but at least as early as 1957 and continuing to the present, the defendants and others to the plaintiff and intervenor plaintiffs unknown have engaged in an unlawful combination and conspiracy to establish, maintain, stabilize and fix the prices of rock salt, in unreasonable restraint of the hereinbefore described trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," c. 647, 26 Stat. 209, as amended (15 U. S. C., Sec. 1) commonly known as the Sherman Act.

21. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, and others to the plaintiff and intervenor plaintiffs unknown, the substantial terms of which have been and are that they agree:

(a) to fix the prices of rock salt to be sold to private and municipal purchasers;

(b) to quote list prices on rock salt bids to municipal and state authorities;

(c) to adhere to an industry established multiple basing point or zone pricing formula which fixes the delivered prices to each destination point in the United States;

(d) to communicate with each other for the purpose of exchanging information concerning F. O. B.

mine prices, transportation charges and other information incidental to fixing delivered prices to be submitted as bids to state and municipal purchasers; and

(e) to notify competing producers in advance of any contemplated change in the F. O. B. mine prices of rock salt.

22. The aforesaid combination and conspiracy has had the effects among others, of:

(a) resulting in identical bids for the award of contracts covering the rock salt requirements of state and municipal governments throughout most of the states in the United States; and

(b) forcing state, municipal and private purchasers to pay high, arbitrary and non-competitive prices for rock salt produced and sold by the defendants and the co-conspirators.

23. The aforesaid combination and conspiracy necessitated frequent communications among defendants and the co-conspirator companies. These communications were made under the cover of legitimate trade practices. As a result of said communications and other acts done by defendants and the co-conspirator companies for the purpose of actively and fraudulently concealing the existence of the aforesaid combination and conspiracy, plaintiff and intervenor plaintiffs neither had knowledge, nor by the exercise of reasonable diligence could they have learned, of the existence of such combination and conspiracy until they first became aware of the government proceedings in July, 1961, as hereinafter set forth in Paragraph 24 of this Amended Complaint.

24. On July 11, 1961, the United States of America instituted Civil Action No. 4-61-Civil 162 in the United

States District Court for the District of Minnesota, Fourth Division, against the defendants Morton Salt Company, International Salt Company and Diamond Crystal Salt Company. By said complaint, the United States charged that for the past several years and continuing until sometime in 1961, defendants engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce in rock salt in violation of Section 1 of the Sherman Act, and further charged that said combination and conspiracy consisted of a continuing agreement to fix prices and submit collusive bids to governmental agencies and corporations in connection with the sale of rock salt. The United States further charged therein that defendants, for the purpose of forming and effectuating said combination and conspiracy had done, among other things, those acts alleged herein in Paragraph 21.

25. On August 6, 1964, the Court found the defendants Morton Salt Company and Diamond Crystal Salt Company guilty of price fixing by agreeing to and effectuating a plan to submit non-competitive uniform prices to government agencies. The Court found that these results had been achieved by meetings among the defendants, telephone calls and otherwise with the aim of supporting adherence to the agreed plan. On November 24, 1964, Findings of Fact and Conclusions of Law were entered and on the same day a Final Judgment was entered enjoining certain acts of the defendants.

26. During the period from July 1957 to June 1962, plaintiff purchased rock salt from defendants, Morton Salt Company, Pioneer Salt Company and Salt Service Incorporated in a total amount of $655,701.51.

27. During the period as set forth in Paragraph 20 of this Amended Complaint, intervenor plaintiffs purchased

rock salt in substantial sums from one or more of defendants or other co-conspirators participating with defendants in the aforesaid combination and conspiracy.

28. By reason of defendants' conspiracy hereinabove alleged, plaintiff's and intervenor plaintiffs' aforesaid purchases were made at prices higher than the prices which plaintiff and intervenor plaintiffs would have had to pay under natural conditions of competition in the absence of any such conspiracy, and plaintiff and intervenor plaintiffs have thereby been injured and damaged. Plaintiff and intervenor plaintiffs are unable to state their damages with precision at the present time, since this determination will require discovery of and analysis of and an accounting from defendants' books and records.

WHEREFORE, plaintiff and intervenor plaintiffs pray that a joint and several judgment be entered in their favor and in favor of the entire class against the defendants in the amount of threefold the damages sustained by plaintiff and intervenor plaintiffs as a result of defendants' violations of the antitrust laws alleged, together with such interest thereon as is permitted by law, and their costs of suit, including reasonable attorneys' fees.

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Exhibit A to Amended Complaint.

SCHEDULE OF INTERVENING PLAINTIFFS

In Civil Action No. 33781 as of May 14, 1965.

I. STATES

Commonwealth of Pennsylvania

II. MUNICIPAL CORPORATIONS AND POLITICAL SUBDIVISIONS

Connecticut:

Stamford

Maine:

Augusta
Bangor
Bath
Brewer
Brunswick
Bucksport
Cape Elizabeth
Caribou
Farmington
Freeport
Gardiner
Houlton
Kennebunk
Lewiston
Limestone
Lisbon
Millinocket
Portland
Presque Isle
Rockland
Scarborough
Skowhegan
South Portland
Town of Falmouth
Waterville
Westbrook
Wilton
Windham
Yarmouth

Maryland:

Baltimore

Massachusetts:

Boston

Michigan:

Bay City
Dearborn
Detroit
Grand Haven
Grand Rapids
Holland
Lansing
Livonia
Saginaw
Wyoming

New Jersey:

Irvington

New York:

New York City
Town of Oyster Bay, L. I.

Pennsylvania:

Allegheny County
Borough of Monroeville
Easton
Hazleton
Pittsburgh
Whitehall Borough

III. Public Bodies Corporate

Michigan:

Board of County Road Commissioners of Macomb County
Board of County Road Commissioners of Muskegon County
Board of County Road Commissioners of Oakland County

Board of County Road Commissioners of Washtenaw County
Board of County Road Commissioners of Wayne County

New York:

New York City Transit Authority
Port of New York Authority

Certificate of Service.

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record for the defendants as follows:

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DAVID BERGER
David Berger

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND OTHERS SIMILARLY SITUATED,
Plaintiff

and

COMMONWEALTH OF PENNSYLVANIA, ET AL.
Intervenor Plaintiffs

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE, INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY,
CARGILL, INCORPORATED.

ORDER OF COURT THAT "CLASS" WILL BE CLOSED 6/1/66.

AND NOW, this 7th day of December, 1965, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The class as defined in plaintiff's and intervenor plaintiffs' Amended Complaint will be closed on June 1, 1966. No additional parties plaintiff will be permitted to intervene in this action after June 1, 1966.

2. June 1, 1966 will also mark the terminal date on or before which all parties must complete their discovery.

ALLAN K. GRIM, *J.*

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION NOS. 33781, ET AL.

CITY OF PHILADELPHIA, ET AL.

v.

MORTON SALT COMPANY, ET AL.
AND ALL RELATED CASES PENDING IN THIS DISTRICT.

PRE-TRIAL ORDER.

AND Now, to wit, this 14th day of February, 1966, hearings having been held in both Minneapolis and Philadelphia for the purpose of determining the orders of and dates upon which plaintiffs shall depose witnesses of the defendants in pre-trial procedures in the "rock salt cases", and proposed Schedules having been submitted in both Minneapolis and Philadelphia, and hearing held thereon; and the Court having considered plaintiffs' and defendants' views as expressed, either written or orally, it is now ORDERED, ADJUDGED AND DECREED that the following Order be entered in all of the pending rock salt cases in this District:

1. A schedule of witnesses to be deposed by plaintiffs and the dates of taking of such depositions is attached hereto and labeled Schedule "A". Said Schedule shall constitute notice of the taking of depositions in conformity with the Federal Rules of Civil Procedure, except as otherwise provided herein.

2. The depositions listed will be taken in Minneapolis, Minnesota, or Philadelphia, Pennsylvania, at such Federal courtroom or place to be provided by the Court. The depositions will be taken in the order and at the times and places indicated on Schedule "A", except as the Court may otherwise order, or by agreement of all the parties.

3. If there is any problem concerning the availability of any present employee or officer of any of the defendants, by reason of age or health, such defendant will file a statement reflecting such problem with the Court, either by February 25, 1966 or within five days of the date of this Order, whichever is later. As to former employees, each defendant will file within the same period of time a statement of such employee's last known address or location and, if known, his age, state of health, and present position.

4. Plaintiffs will serve a notice for the taking of the depositions of all witnesses not employed by the defendants by March 8, 1966. Such notice will provide that plaintiffs shall advance to each witness his necessary transportation expense, a per diem of $15.00, and reasonable expenses of lodging not to exceed $12.00 per day for each day that he is present for depositions.

5. If any party wishes to move for the release of a witness's testimony before a Grand Jury other than such portions that may have been read into the record in U. S. v. Morton, et al., 4-61 Crim. 65 (District of Minnesota), a copy of said motion shall be served upon the United States Attorney of the District in which the motion is made, and such motion shall be heard by this Court and decision rendered thereon on an ad hoc basis.

6. Each deposition taken pursuant to this Order shall be governed by Rule 26 of the Federal Rules of Civil Pro-

cedure, and may be used by or against any party who is present or represented at the taking of such deposition or had notice thereof, except that where the defendant adverse party agrees to and does produce the witness for examination at trial, the deposition of such witness will not be admissible as direct testimony.

7. Lead counsel who shall conduct the initial examination of present or former employees of defendants Morton, Diamond, International, Carey, Cutler-Mager, Cargill and Cargo Carriers shall be Maxine Boord Virtue, David Berger, and Robert A. Albrecht. Lead counsel for the depositions of officials of defendants, Hardy, Barton, American and Gunter shall be Robert R. Northcutt and William E. Mullin. Lead counsel may assign other counsel as lead counsel to take the initial examination of particular deponents. There shall be but one lead counsel for the deposition of each deponent. After the conclusion of the initial examination of each witness by lead counsel, other counsel may examine the witness, including further development of lines of questioning previously opened, provided that such counsel shall not engage in unnecessary repetition.

8. The original transcript of the testimony of each deponent shall be corrected and signed by the witness within forty-five (45) days of presentation of the transcript to the witness, unless signature is waived by the deponent and by all parties present at the deposition. If signature is waived, no party in any of the above actions may object to the admissibility of the deposition for lack of a signature.

9. Within forty-five (45) days after the transcript of the last deposition to be taken pursuant to Schedule "A" has been mailed by the reporter to all those parties who had ordered copies by five (5) days following the taking of

testimony, all parties desiring further interrogation of one or more of the witnesses shall make written application to the Court therefor, specifying the names of the witnesses, the subject matter and necessity for additional inquiry. Copies of the application shall be served by mail upon counsel for all parties in the above actions. Within ten (10) days of service thereof, response to such application shall be filed and served as provided above. In the event that the Court determines that recall of a witness is appropriate, it will schedule the recall deposition on the first available date thereafter not in conflict with Schedule "A".

10. In the absence of application for further interrogation within the time provided therefor, no further interrogation of the witness by any party receiving notice of the deposition shall be permitted, except upon further Order of the Court on good cause shown.

11. If any of the depositions listed in Schedule "A" be rescheduled by the Court or by agreement of counsel, prompt notice shall be given to all parties by mail or telegraph.

12. Each defendant and each present employee of defendant will produce for plaintiffs' inspection at each deposition the following documents, except as the same may have been produced for plaintiffs' inspection heretofore:

A. Expense accounts of the deponent for the period of time from January 1, 1953 to June 28, 1961;

B. All documents taken to or received or prepared at any meeting relating to prices or bids attended by the individual deponent and any employee, agent, or representative of any other salt producer or distributor, including all memoranda, reports, notes of tele-

phone conversations, instructions, orders to subordinates, or other documents concerning any meeting described herein.

13. Copies of depositions shall be filed in each District in which these cases are pending.

14. All previous Orders heretofore entered in any of the cases pending in this District, insofar as inconsistent with the above, are hereby VACATED AND SET ASIDE.

By THE COURT:

THOMAS J. CLARY, *Ch. J.*
JOSEPH S. LORD, III, *J.*

DEPOSITIONS.

SCHEDULE "A".

Witness	*Company*	*Date*	*Place*
1. Raymond W. King	Cargill	March 15, 1966	Minneapolis
2. F. Clayton Tonnemaker	Cargill	March 16 & 17, 1966	Minneapolis
3. L. Starr Killen	Cargill	March 17 & 18, 1966	Minneapolis
4. Edson K. Green	International	March 22, 23 & 24, 1966	Philadelphia
5. Ralph Haberle	International	March 29 & 30, 1966	Philadelphia
6. D. J. Daniels	International	March 30, 1966	Philadelphia
7. Paul S. Trible	International	March 30, 1966	Philadelphia
8. Ed Fuller	International	March 31, 1966	Philadelphia
9. Maxwell M. Lenhoff	International	March 31, 1966	Philadelphia
10. Joseph R. White	International	April 5, 1966	Philadelphia
11. A. S. Hunter	International	April 6, 1966	Philadelphia
12. Arthur R. Armstrong	International	April 6, 1966	Philadelphia

Witness	*Company*	*Date*	*Place*
13. H. Way Conn	Morton	April 7, 1966	Philadelphia
14. Paul LaLiberte	Cutler-Magner	April 19, 1966	Minneapolis
15. Frank Crane	Morton	April 20, 1966	Minneapolis
16. Flavel Beattie	Morton	April 20 & 21, 1966	Minneapolis
17. Elias Ekman	Morton	April 26, 27 & 28, 1966	Minneapolis
18. Herbert R. Stratford	Morton	April 28, 1966	Minneapolis
19. Geedes Carrington	Morton	May 3, 1966	Minneapolis
20. J. Byron Page	Morton	May 3, 1966	Minneapolis
21. Daniel Peterkin	Morton	May 4, 1966	Minneapolis
22. Charles F. Forgue	Morton	May 5, 1966	Minneapolis
23. John M. Rankin	Morton	May 10, 1966	Minneapolis
24. Spencer Meilstrup	Diamond	May 12, 1966	Minneapolis
25. H. L. Kirby	Diamond	May 12, 1966	Minneapolis
26. Charles F. Moore	Diamond	May 17 & 18, 1966	Minneapolis
27. J. B. Smith	Diamond	May 19 & 20, 1966	Minneapolis

Witness	*Company*	*Date*	*Place*
28. Whittaker H. Lonsdale	Diamond	May 24, 1966	Minneapolis
29. Edward M. Dodd	Diamond	May 25 & 26, 1966	Minneapolis
30. C. E. Boyce	Diamond	May 26, 1966	Minneapolis
31. Carroll C. Sargent	Carey	June 2, 1966	Minneapolis
32. Lloyd Winslow	Carey	June 2, 1966	Minneapolis
33. Howard J. Carey, Jr.	Carey	June 3 & 4, 1966	Minneapolis
34. Blakely Jordan	Diamond	June 14, 15 & 16, 1966	Minneapolis
35. William Price	International	June 21, 22 & 23, 1966	Philadelphia
36. Lewis T. Hardy	Hardy	July 6, 1966	Minneapolis
37. Raymond P. Hawley	Hardy	July 7, 1966	Minneapolis
38. Joe Gorsky	Barton	July 8, 1966	Minneapolis
39. Kermit C. Voss	Barton	July 12, 1966	Minneapolis
40. H. H. Moseley	American	July 13, 1966	Minneapolis
41. D. S. Doores	American	July 14, 1966	Minneapolis
42. Gerald S. Gunther	Gunther	July 15, 1966	Minneapolis

Minneapolis—Courtroom #2, Federal Courts Building, Fourth & Marquette
Philadelphia—Courtroom #7, U. S. Courthouse, 9th and Market Streets.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA, A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY.

MOTION OF THE NEW YORK STATE THRUWAY AUTHORITY FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF.

Intervenor plaintiff, New York State Thruway Authority, a public corporation organized under the laws of the State of New York, respectfully moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a party plaintiff in the above-captioned class action, and in support thereof avers the following:

1. Intervenor plaintiff is a public corporation organized and existing under the laws of the State of New York. It is a member of the class represented by the plaintiff in the above action, said class consisting of all state and municipal governments, governmental agencies and governmental subdivisions using rock salt for deicing and water

softening purposes and generally purchasing rock salt by sealed bids.

2. Intervenor plaintiff has made purchases from defendants of the products which are the subject of said action, as indicated in its proposed complaint, of which copies are annexed as Exhibit 1.

3. The aforesaid purchases were made at prices illegally increased by defendants' conspiracies, and intervenor plaintiff has been damaged thereby.

4. Intervenor plaintiff's claims involve questions of law and fact in common with those in the pending action.

WHEREFORE, intervenor plaintiff requests that it be permitted to intervene as a party plaintiff in said action and to file and serve its proposed complaint on the defendants therein.

DAVID BERGER,
David Berger,
2220 Phila. Saving Fund Bldg.,
Philadelphia, Pennsylvania,

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York,
State Capitol,
Albany, New York,
Attorneys for Plaintiff and Intervenor Plaintiffs.

Of Counsel:
HERBERT B. NEWBERG,
HAROLD GREENBERG,
H. LADDIE MONTAGUE, JR.,
COHEN, SHAPIRO, BERGER & COHEN,
2220 Phila. Saving Fund Bldg.,
Phila., Pa.

Exhibit 1 to Motion.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA, A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff

and

NEW YORK STATE THRUWAY AUTHORITY,
Intervenor Plaintiff

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY,
Defendants.

COMPLAINT OF INTERVENOR PLAINTIFF, NEW YORK STATE THRUWAY AUTHORITY.

Jury Trial Demanded.

1. Intervenor plaintiff is a public corporation organized and existing under the laws of the State of New York.

It is a member of the class represented by the plaintiffs in the above action, said class consisting of all state and municipal governments, governmental agencies and governmental subdivisions using rock salt for deicing and water softening purposes and generally purchasing rock salt by sealed bids.

2. Intervenor plaintiffs incorporate herein by reference paragraphs 1, 4 to 23 inclusive, 27 and 28 of the Amended Complaint inserting the words "Intervenor Plaintiff" in lieu of the words "Intervenor Plaintiffs" wherever they appear in said paragraphs other than in paragraph 1.

3. During the period as set forth in paragraph 20 of the Amended Complaint, intervenor plaintiff purchased rock salt in substantial sums from one or more of defendants or other co-conspirators participating with defendants in the aforesaid combination and conspiracy.

4. For the duration of defendants' conspiracy and by reason of such conspiracy hereinabove alleged, intervenor plaintiff's aforesaid purchases were made at prices higher than the prices which intervenor plaintiff would have had to pay under natural conditions of competition in the absence of any such conspiracy, and intervenor plaintiff has thereby been injured and damaged. Intervenor plaintiff is unable to state its damages with precision at the present time, since its determination will require discovery of and an analysis of and an accounting from defendants' books and records.

WHEREFORE, intervenor plaintiff requests that judgment be entered in its favor in threefold the amount of the

damages determined to have been sustained by intervenor plaintiff, together with the cost of suit, including a reasonable attorneys' fee.

DAVID BERGER
David Berger
2220 Phila. Saving Fund Bldg.,
Philadelphia, Pennsylvania,

Louis J. Lefkowitz
Attorney General of the State
of New York,
State Capitol
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Attorneys for Plaintiff and Intervenor Plaintiffs

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IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION NO. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY.

ORDER OF MAY 31, 1966.

AND NOW, to wit, this 31st day of May, 1966, it is hereby ORDERED AND DECREED that the Motion of the New York State Thruway Authority, a public corporation organized under the laws of the State of New York, to intervene as a party plaintiff in the above-captioned action is hereby granted, and that the said intervenor plaintiff may serve its complaint on the defendants in said action by service on its counsel of record therein.

JOSEPH S. LORD, III, *J.*

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY,

FORM OF ORDER.

AND Now, to wit, this day of , 1966, it is hereby ORDERED AND DECREED that the Motion of the State of New York to intervene as a party plaintiff in the above-captioned action is hereby granted, and that the said intervenor plaintiff may serve its complaint on the defendants in said action by service on their counsel of record therein.

J.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY.

MOTION OF THE STATE OF NEW YORK FOR LEAVE TO INTERVENE AS PARTY PLAINTIFF.

Intervenor plaintiff, the State of New York, respectfully moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a party plaintiff in the above-captioned class action, and in support thereof avers the following:

1. Intervenor plaintiff is the State of New York, a member of the class represented by the plaintiff in the above action, said class consisting of all state and municipal governments, governmental agencies and governmental subdivisions using rock salt for deicing and water softening purposes and generally purchasing rock salt by sealed bids.

2. Intervenor plaintiff has made purchases from defendants of the products which are the subject of said ac-

tion, as indicated in its proposed complaint, of which copies are annexed as Exhibit 1.

3. The aforesaid purchases were made at prices illegally increased by defendants' conspiracies, and intervenor plaintiff has been damaged thereby.

4. Intervenor plaintiff's claims involve questions of law and fact in common with those in the pending action.

WHEREFORE, intervenor plaintiff requests that it be permitted to intervene as a party plaintiff in said action and to file and serve its proposed complaint on the defendants therein.

DAVID BERGER,
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LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,

RUTH KESSLER TOCH,
Acting Solicitor General of the State of New York,
State Capitol,
Albany, New York,
Attorneys for Plaintiff and Intervenor Plaintiffs.

Of Counsel:

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HAROLD GREENBERG
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Phila., Pa.

Exhibit 1 to Motion to Intervene.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, PENNSYLVANIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff

and

STATE OF NEW YORK,
Intervenor Plaintiff

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY.

COMPLAINT OF INTERVENOR PLAINTIFF STATE OF NEW YORK.

Jury Trial Demanded.

1. Intervenor plaintiff is the State of New York, a member of the class represented by the plaintiffs in the above action, said class consisting of all state and municipal governments, governmental agencies and governmental subdivisions using rock salt for deicing and water softening purposes and generally purchasing rock salt by sealed bids.

2. Intervenor plaintiff incorporates herein by reference paragraphs 1, 4 to 25 inclusive, 27 and 28 of the Amended Complaint inserting the words "Intervenor Plaintiff" in lieu of the words "Intervenor Plaintiffs" wherever they appear in said paragraphs other than in paragraph 1.

3. During the period as set forth in paragraph 20 of the Amended Complaint, intervenor plaintiff purchased rock salt in substantial sums from one or more of defendants or other co-conspirators participating with defendants in the aforesaid combination and conspiracy.

4. For the duration of defendants' conspiracy and by reason of such conspiracy hereinabove alleged, intervenor plaintiff's aforesaid purchases were made at prices higher than the prices which intervenor plaintiff would have had to pay under natural conditions of competition in the absence of any such conspiracy, and intervenor plaintiff has thereby been injured and damaged. Intervenor plaintiff is unable to state its damages with precision at the present time, since its determination will require discovery of and an analysis of and an accounting from defendants' book and records.

WHEREFORE, intervenor plaintiff requests that judgment be entered in its favor in threefold the amount of the damages determined to have been sustained by intervenor plaintiff, together with the cost of suit, including a reasonable attorneys' fee.

DAVID BERGER,
David Berger,
2220 Philadelphia Saving Fund Bldg.,
Philadelphia, Pennsylvania,

LOUIS J. LEFKOWITZ, Attorney General
of the State of New York,
RUTH KESSLER TOCH, Acting Solicitor
General of the State of New York,
State Capitol,
Albany, New York,
Attorneys for Plaintiff and
Intervenor Plaintiffs.

Of Counsel:

HERBERT B. NEWBERG,
HAROLD GREENBERG,
H. LADDIE MONTAGUE, JR.,
COHEN, SHAPIRO, BERGER & COHEN,
2220 Phila. Saving Fund Bldg.,
Phila., Pa.

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record for the defendants as follows:

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Patrick T. Ryan, Esq.
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CAYUGA ROCK SALT COMPANY
Daniel Lowenthal, Esq.
Israel Packel, Esq.
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PIONEER SALT COMPANY
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DIAMOND CRYSTAL SALT COMPANY
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DAVID BERGER.
David Berger.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND OTHERS SIMILARLY SITUATED,
Plaintiff

and

COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Intervenor Plaintiffs

v.

CAYUGA ROCK SALT COMPANY,
INTERNATIONAL SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE, INCORPORATED.

OBJECTIONS OF DEFENDANTS CAYUGA ROCK SALT COMPANY, INTERNATIONAL SALT COMPANY, PIONEER SALT COMPANY, SALT SERVICE, INCORPORATED TO MOTION OF THE STATE OF NEW YORK FOR LEAVE TO INTERVENE AS PARTY PLAINTIFF.

Defendants Cayuga Rock Salt Company, International Salt Company, Pioneer Salt Company, Salt Service, Incorporated object to the Motion of the State of New York for Leave to Intervene, and urge the Court to deny the Motions. Defendants object for the following reasons:

1. On December 7, 1965, Judge Allan K. Grim entered an order closing the class on June 1, 1966. That order, attached hereto as Exhibit A, stated that "No additional parties plaintiff will be permitted to intervene in this action after June 1, 1966." The motion to intervene as party plaintiff was filed by the State of New York on June 14, 1966, almost two weeks after the closing of the class; accordingly, it must be denied.

2. The State of New York had ample notice of the pendency of this suit. This action was filed on July 1, 1963, two years and eleven months prior to the closing of the class. During those years, all absent members of the class had full notice and opportunity to petition to intervene in the action. The filing of the action by the City of Philadelphia was reported at length in the newspapers, and in legal periodicals and services, for example, the BNA Antitrust and Trade Regulation Report, No. 104, p. A-12. As a result of the widespread publicity given to these cases, the National Institute of Municipal Law Officers (hereinafter called "NIMLO") in the fall of 1964, sent a special communication to all of its members informing them of the existence of a possible cause of action on the part of any municipality purchasing rock salt. Shortly thereafter a meeting was held by the Institute in Washington, D. C. to discuss the advisability of suit and the possibilities in terms of available jurisdictions and types of actions. At that time, of course, the instant action was already pending here in the Eastern District of Pennsylvania. One of the purposes of the Washington meeting was to discuss the advantages of joining the Philadelphia class action or suing in other districts. A committee was formed by the Institute to consider these problems.

3. On January 13, 1965, the Defendant, International Salt Company, filed a Motion to close the class. Thereafter,

briefs were presented. This Motion was considered by the Court on numerous occasions between that date and December 7, 1965, when the order closing the class was, in fact, entered. During this entire period it was clear to all interested persons that the Defendants were making every effort to persuade the Court to close the class.

4. Further, ample notice was given of Judge Grim's intended action in closing the class. On June 9, 1965, Judge Grim wrote to counsel for plaintiffs suggesting that the class might be closed on July 1, 1965. This letter is attached as Exhibit B. On the next day, NIMLO's attorneys wrote a letter to all members of NIMLO advising them as follows:

> "Dear
>
> "On June 9, 1965, Judge Grim, who is presiding in the City of Philadelphia action, wrote to plaintiffs' counsel that he was considering closing the Philadelphia class action on July 1, 1965. The effect of this is unclear, but it would probably mean that other members of the class would not be allowed to intervene in the City of Philadelphia action. This, however, would not foreclose the City from filing a separate action if it were done within the time allowed by the applicable statute of limitations. Judge Grim's action would affect all NIMLO members. I thought you ought to be informed of this development and suggest that you give this matter your earliest attention.
>
> Sincerely, John J. Fleming, Chairman, NIMLO Committee on Antitrust Violations."

Accordingly, every member of the class had specific notice as long ago as June, 1965 that Judge Grim was contemplating closing the class.

5. On December 6, 1965 a hearing was held before Judge Grim on the defendants' formal motion to close the class. At that hearing, Judge Grim specifically asked general counsel for NIMLO who was present:

> "Tell me this: If I should sign the order that can be prepared closing discovery and closing the class as of June 1, 1966 [almost six months hence], how would you get that notice to the members of your Association?"

General counsel for NIMLO responded that a special release containing a copy of the order closing the class as of June 1, 1966 would be sent to all NIMLO members. Apparently when Judge Grim signed the order on December 7, 1965 this step was taken in accordance with counsel's statement to the Court, and hence the members of NIMLO, received still another notification (including a copy of Judge Grim's order itself) that if there was to be any intervention in the Philadelphia action it would have to be accomplished by June 1, 1966.

6. Courts in four other class actions in the rock salt litigation have closed those classes six months earlier, in December 1965, although each of those actions was instituted *after* this one. In Minneapolis, Judge Larson closed the following class actions as of December 31, 1965: an action [1] originally filed by the State of Minnesota on December 31, 1964 (eighteen month after the present suit was filed); an action [2] originally filed by the State of Wisconsin on January 4, 1965; and an action [3] originally filed by the

1. No. 4-64-Civ. 422.
2. No. 4-65-Civ. 1.
3. No. 4-65-Civ. 197.

State of Iowa on June 28, 1965 (virtually two years after this action was filed). On June 22, 1966, Judge Larson denied the petition of the city of Fort Wayne, Indiana to intervene because it was filed after the class was closed. In Massachusetts in an action[4] instituted on January 4, 1965 by the State of Massachusetts, Judge Caffrey closed the class as of December 15, 1965.

7. At a hearing held on November 29, 1965, Judge Grim referred to the closing of the Minneapolis class actions, noting that this question had been "in the back of my mind a long time." Judge Grim then stated that "all of these cases should as much as possible follow each other . . . ."[5] However, he decided on December 7, 1965 to delay closing the class until June 1, 1966, although this action had been instituted much earlier than the other actions. By comparison, therefore, the closing of the class in this action was long delayed, and this Court should not reverse its position at this late date.

8. All settlement negotiations in this case have been conducted on the assumption that the class would be closed June 1, 1966. No final settlement could be agreed upon until the class was closed. To reopen it now would be a serious setback to progress in this direction.

9. The State of New York has had almost three years to move to intervene in this action. Its failure to do so within extremely liberal time limits and after ample notice shows a lack of diligence or decision on its part. The State of New York has failed to act in time; it is now too late.

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4. Civil Action No. 65-1-C.

5. Transcript, Hearing, November 29, 1965, at 46.

For the foregoing reasons, defendants respectfully request the Court to deny the Motion of the State of New York for Leave to Intervene as Party Plaintiff.

INTERNATIONAL SALT COMPANY,

By: LEWIS H. VAN DUSEN, JR.,

SALT SERVICE, INCORPORATED,

By: PAUL MATZKO,

CAYUGA ROCK SALT COMPANY,

By: DONALD BROWN,

PIONEER SALT COMPANY,

By: ROBERT W. SAYRE.

June 24, 1966

I certify that copies of these Objections have been served on all parties in the case by mailing same to their respective counsel.

LEWIS H. VAN DUSEN, JR.

Exhibit A to Objections.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.
CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA,
A MUNICIPAL CORPORATION, ON BEHALF OF ITSELF AND OTHERS SIMILARLY SITUATED,
Plaintiff

AND

COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Intervenor Plaintiffs

v.

MORTON SALT COMPANY,
PIONEER SALT COMPANY,
SALT SERVICE, INCORPORATED,
INTERNATIONAL SALT COMPANY,
CAYUGA ROCK SALT COMPANY,
DIAMOND CRYSTAL SALT COMPANY.
CARGILL, INCORPORATED.

ORDER.

AND Now, this 7th day of December, 1965, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The class as defined in plaintiff's and intervenor plaintiffs' Amended Complaint will be closed on June 1, 1966. No additional parties plaintiff will be permitted to intervene in this action after June 1, 1966.

2. June 1, 1966 will also mark the terminal date on or before which all parties must complete their discovery.

ALLAN K. GRIM, *J.*

Exhibit B to Objections.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA.

chambers of
ALLAN K. GRIM
Judge

June 9, 1965

David Berger, Esq.,
Cohen, Shapiro, Berger and Cohen, Esqs.,
2220 Philadelphia Saving Fund Building,
Philadelphia, Pa. 19107

Re: City of Philadelphia v. Morton Salt Co.,
et al., Civil Action No. 33781

Dear Mr. Berger:

July 1, 1965, will be the second anniversary of the time the suit was started. I am thinking of entering an order closing the class as of that time to prevent any additional interventions after that time. It seems to me that as a matter of convenience to the court and the parties a time must be fixed at which the class will be closed and to me July 1 seems to be a proper time.

However, I will be glad to hear comment by letter from any party on or before June 20th.

Very truly yours,

AKG:AH
c. All counsel

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, ET AL.

v.

MORTON SALT COMPANY, ET AL.

ORDER OF COURT DENYING MOTION TO INTERVENE FILED BY THE STATE OF NEW YORK, DATED 6/14/66; AND THAT THE CLASS FOR ALL PURPOSES IN THIS CASE IS CLOSED AS OF 6/1/66.

AND Now, to wit, this 1st day of February, 1967, the Motion to Intervene filed by the State of New York, dated June 14, 1966, is hereby denied and it is ordered and decreed that the class for all purposes in this case is closed as of June 1, 1966.

JOSEPH S. LORD, III, *J.*

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 33781.

CITY OF PHILADELPHIA, ET AL.

v.

MORTON SALT CO., ET AL.

NOTICE OF APPEAL.

Notice is hereby given that the State of New York, intervening plaintiff, hereby appeals to the United States Court of Appeals for the Third Circuit from an Order entered on February 1, 1967, which denied its motion to intervene in the above captioned class action and which closed the class in the above captioned matter for all purposes as of June 1, 1966.

DAVID BERGER,
David Berger,
2220 PSFS Building,
Philadelphia, Pa. 19107.
Attorney for Appellant,
State of New York.